

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIMOTHY KINCAID,
a/k/a Sha-Teak A. Imani,

Petitioner,

v.

CASE NO. 2:11-cv-11359
HONORABLE LAWRENCE P. ZATKOFF

D. BERGH,

Respondent.

**ORDER DENYING PETITIONER'S MOTION
FOR A CERTIFICATE OF APPEALABILITY**

Petitioner Timothy Kincaid has appealed the Court's opinion and judgment denying his habeas corpus petition. The Court dismissed the habeas petition because it was barred by the one-year statute of limitations and because Petitioner's claim that the state court lacked jurisdiction to try him lacked merit.

A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. . . . When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a [certificate of appealability] should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

Slack v. McDaniel, 529 U.S. 473, 484 (2000).

For the reasons given in the Court's dispositive opinion, reasonable jurists would not find

the Court's assessment of Petitioner's jurisdictional claim debatable or wrong. Nor would reasonable jurists debate whether the Court's procedural ruling was correct or whether the petition states a valid claim of the denial of a constitutional right. Therefore, Petitioner's motion for a certificate of appealability [dkt. #17] is **DENIED**.

S/Lawrence P. Zatkoff

LAWRENCE P. ZATKOFF

UNITED STATES DISTRICT JUDGE

Dated: June 25, 2012

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on June 25, 2012.

S/Marie E. Verlinde

Case Manager

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